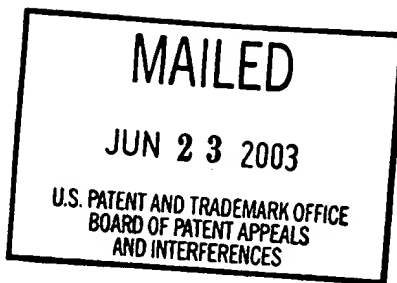


The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte TIMOTHY G. CAUDLE

Appeal No. 2003-0452
Application No. 09/846,714

ON BRIEF

Before COHEN, STAAB, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 50 to
53, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to sealed pouches having contoured edges with a pour spout (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Schwarzkopf	3,448,915	June 10, 1969
Bell	5,971,613	Oct. 26, 1999

Claims 50 to 53 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schwarzkopf.

Claims 50 to 53 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bell.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 6, mailed May 9, 2002) and the answer (Paper No. 10, mailed October 16, 2002) for the examiner's complete reasoning in support of the rejections,

and to the brief (Paper No. 9, filed September 26, 2002) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Claims 50 and 52, the only independent claims on appeal, read as follows:

50. A single pouch comprising a first lateral edge and a second lateral edge, each of the first and the second lateral edges comprising a concave surface and a convex surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge and the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge.

52. A single pouch comprising a first lateral edge and a second lateral edge, the first lateral edge comprising a concave surface and the second lateral edge comprising a convex surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge.

Schwarzkopf's invention relates to tapered bags or sleeves which are made from plastics material sheeting and are joined by tearable perforation lines. Schwarzkopf teaches that "tapered bags are used, e.g., for flowers, umbrellas, neckties etc." while

"tapered sleeves, which are open at both ends, may be used for flowers in pots and for protecting yarns for weaving from dust." Figures 1, 2 and 2a each show a pair of tapered sleeves which are made from two flat sheeting webs and open at both ends. Figures 3 and 4 each show a pair of tapered bags made from two flat sheeting webs. The pair of bags shown in Figure 3 are similar to the pair of sleeves shown in Figure 1 with the difference that each of the narrow openings 14 is closed by a heat-sealed seam 25, 26. Figures 5 and 6 each show a pair of tapered bags made from a tubing. Figures 7 and 8 each show a pair of tapered sleeves having curved side edges and made from two flat sheeting webs. The pairs of sleeves shown in Figures 7 and 8 having two open ends are similar to the embodiment of Figure 2, where two relatively offset flat sheeting webs having the same width are employed, but the perforated heat-sealed seam 33 and the lateral seams 34 and 35 formed by severing and heat-sealing are curved for a more pleasing appearance. As shown in Figures 7 and 8, the curved lateral seams 34 and 35 each have a concave surface and a convex surface, wherein the concave surface of the lateral seam 34 is substantially opposite the convex surface of the lateral seam 35 and the convex surface of the lateral seam 34 is substantially opposite the concave surface of the lateral seam 35.

Bell's invention relates to bag or pouch construction having a side seal with a nonlinear edge. One example of a bag arrangement according to Bell's invention is

illustrated in Figure 4 at 150. Bag arrangement 150 includes first and second opposed panel sections 152 and 154. Each of the first and second panel sections 152, 154 include a first end edge 156 at a first end 158 of the bag arrangement 150 and a second end edge 160 at a second end 162 of the bag arrangement 150. Extending between the first and second end edges 156, 160 are opposite side edges 164, 166. First and second panel sections 152, 154 are secured to one another along portions of side edges 164, 166 preferably by means of seals 192, 194. Seals 192, 194 extend along side edges 164, 166, respectively, between first end 158 and points 196, 198, where a gusset 168 intersects with the first and second panel sections 152, 154. Each of first and second seals 192, 194 have an inner edge portion 200, 202 preferably including a nonlinear configuration 204 along the inner edge portions 200, 202. Inner edge portions 200, 202 may include a plurality of spaced inwardly directed projections 206 or a plurality of spaced outwardly directed recesses 208, such as those illustrated in Figures 5-7. As shown in Figure 4, the inwardly directed projections 206 on first seal 192 are positioned opposite the inwardly directed projections 206 on second seal 194 and the outwardly directed recesses 208 on first seal 192 are positioned opposite the outwardly directed recesses 208 on second seal 194. When bag arrangement 150 is filled or partially filled with material, the non-linear edges in bag arrangement 150 reduces the tendency of the side edges 164, 166 from buckling or doubling over, often resulting in about a straight line along side edges 164, 166.

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Anticipation rejection based on Schwarzkopf

In the rejection of claims 50 to 53 as being anticipated by Schwarzkopf, the examiner determined (final rejection, p. 2) that the claimed subject matter was readable on the pair of tapered sleeves shown in either Figure 7 or 8 of Schwarzkopf. The appellant argues (brief, pp. 11-12) that claims 50 to 53 are not anticipated by either Figure 7 or 8 of Schwarzkopf since Schwarzkopf teaches a pair of tapered sleeves not a "single pouch" as claimed.

After considering the positions of the examiner and the appellant, we reach the conclusion that claims 50 to 53 are not anticipated by Schwarzkopf. In that regard, it is our opinion that one skilled in the art would not have viewed the pair of tapered sleeves shown in either Figure 7 or 8 of Schwarzkopf as constituting a "single pouch" when in fact it constitutes two tapered sleeves joined together. Moreover, each sleeve of Schwarzkopf is open at both ends and therefore is not a bag or a pouch.

Since the claimed subject matter is not met by Schwarzkopf for the reasons set forth above, the decision of the examiner to reject claims 50 to 53 under 35 U.S.C. § 102(b) as being anticipated by Schwarzkopf is reversed.

Anticipation rejection based on Bell

In the rejection of claims 50 to 53 as being anticipated by Bell, the examiner determined (final rejection, p. 3) that the claimed subject matter was readable on the pouch shown in Figure 4 of Bell. The appellant argues (brief, pp. 13-14) that claims 50 to 53 are not anticipated by Figure 4 of Bell since Bell does not teach the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge.

After considering the positions of the examiner and the appellant, we find ourselves in agreement with the appellant's position and therefore reach the conclusion that claims 50 to 53 are not anticipated by Bell. In that regard, it is our opinion that one skilled in the art would not have viewed the inwardly directed projections 206 on first seal 192 which are positioned opposite the inwardly directed projections 206 on second seal 194 to be substantially opposite the outwardly directed recesses 208 on second seal 194. Likewise, one skilled in the art would not have viewed the outwardly directed recesses 208 on first seal 192 which are positioned opposite the outwardly directed

recesses 208 on second seal 194 to be substantially opposite the inwardly directed projections 206 on second seal 194.

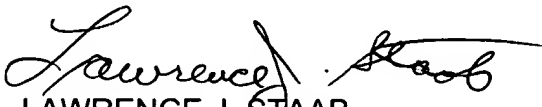
Since the claimed subject matter is not met by Bell for the reasons set forth above, the decision of the examiner to reject claims 50 to 53 under 35 U.S.C. § 102(b) as being anticipated by Bell is reversed.

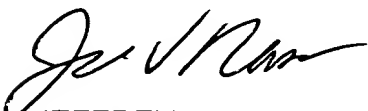
CONCLUSION

To summarize, the decision of the examiner to reject claims 50 to 53 under 35 U.S.C. § 102(b) is reversed.

REVERSED


IRWIN CHARLES COHEN
Administrative Patent Judge


LAWRENCE J. STAAB
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge

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